

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
To Revise Its Electric Marginal Costs, Revenue  
Allocation, and Rate Design.

Application 04-06-024  
(Filed June 17, 2004)

(U 39 M)

**ADMINISTRATIVE LAW JUDGE'S RULING  
GRANTING BART MOTIONS  
TO INTERVENE AND ADD AN ISSUE**

This ruling grants the motions of the San Francisco Bay Area Rapid Transit District (BART) to intervene and add an issue.

**1. Background**

On November 19, 2004, the Commission stated that BART may raise an issue in this proceeding. (Decision (D.) 04-11-015, *mimeo.*, page 63.) On November 23, 2004, BART was advised by ruling that it should file and serve a motion to become a party if it wishes to pursue the issue. Further, BART was informed that it should seek to raise its issue or issues by following the procedure in the August 27, 2004 Scoping Memo. That procedure generally includes a party filing a motion to seek the addition of an issue, with responses to the motion due within two days.

On December 20, 2004, BART filed and served two motions: (1) motion to intervene, and (2) motion to add an issue. No timely responses were filed.

**2. Discussion**

BART is a local government agency providing public transit services in the San Francisco Bay Area. BART states that it currently purchases federal

preference power delivered to BART under special terms and conditions established by the legislature in 1996 and codified in Pub. Util. Code § 701.8. According to BART, this legislation has been amended twice, first in 1998, and second in this past legislative session through enactment of Senate Bill 1201, Chapter 613, Statutes of 2004.

The Commission was unable in a recent decision to determine whether BART is exempt from paying energy recovery bond charges, but found that the issue may be considered in this proceeding. (D.04-11-015, Ordering Paragraph 60.) BART's assertion that it has a direct and significant interest in this proceeding, and that its intervention will not unduly broaden the issues under consideration in this matter, appears reasonable. BART's unopposed motion to intervene should be granted.

Further, BART's unopposed motion to add the issue of whether it is exempt from paying energy recovery bond charges should be granted. BART's issue appears to involve both revenue allocation and rate design. Neither BART nor any party commented on whether the issue should be stated in one or both of these categories within the list of issues. One important aspect of the issue seems to be who will pay these charges if BART does not. As such, the issue will be added under revenue allocation. Parties, however, should not interpret this to preclude development of a full and complete record on rate design, and all material and relevant aspects of the issue.

**IT IS RULED** that:

1. The December 20, 2004 motion of the San Francisco Bay Area Rapid Transit District (BART) to intervene is granted. The service list shall be modified to include in the appearance category for BART (with Edward W. O'Neill as lead counsel):

Edward W. O'Neill Robert B. Gex DAVIS WRIGHT TREMAINE LLP One Embarcadero Center, Suite 600 San Francisco, CA 94111 Telephone: 415-276-6500 Facsimile: 415- 276-6599 E-mail: <a href="mailto:edwardoneill@dwt.com">edwardoneill@dwt.com</a> E-mail: <a href="mailto:bobgex@dwt.com">bobgex@dwt.com</a>	Marco Gomez Office of General Counsel San Francisco Bay Area Rapid Transit District 300 Lakeside Drive, 23 <sup>rd</sup> Floor Oakland, CA 94607 Telephone: 510-464-6058 Facsimile: 510-464-6049 E-mail: <a href="mailto:mgomez1@bart.gov">mgomez1@bart.gov</a>
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2. The December 20, 2004 motion of the San Francisco Bay Area Rapid Transit District (BART) to add an issue granted, and Issue 2.6 is added:

2.6. Whether, and to what extent, BART may be exempt from energy recovery bond charges.

Dated December 28, 2004, at San Francisco, California.

/s/ BURTON W. MATTSON

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Burton W. Mattson  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties who have provided an electronic mail address, this day served a true copy of the original attached Administrative Law Judge's Ruling Granting BART Motions to Intervene and Add an Issue on all parties of record in this proceeding or their attorneys of record.

Dated December 28, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS  
Elizabeth Lewis

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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